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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 835

BROTHERHOOD OF RAILROAD TRAINMEN, *Petitioner*,

v.

CHARLES V. SMITH, and ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN GENERAL COMMITTEE OF ADJUSTMENT FOR THE BALTIMORE AND OHIO RAILROAD and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation, *Respondents*.

BRIEF OF CERTAIN RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 251 F. 2d 282. No petition for rehearing was presented to that court. The opinion of the District Court is reported at 144 F. Supp. 869. The opinions of the courts below are set forth in the Appendix to the Petition for Writ of Certiorari (App. pp. 1a, 8a).[1]

[1] References to the Petition for Writ of Certiorari will be cited as "Petition" and to the Appendix thereto as "App." References to Appellant's Appendix Record and Appellees' Appendix Record in the Court of Appeals will be cited as "R." and "S. R.", respectively.

QUESTIONS PRESENTED

The questions presented by the petitioner fail to express the issues in the terms and circumstances of the case and the record evidence. With respect for the entire record the questions presented are:

1. Does a District Court of the United States have jurisdiction of a suit involving the validity of a union shop contract under the Railway Labor Act, no question of meaning or interpretation of such contract being presented?

2. Does the Railway Labor Act authorize a railway labor union and a railroad carrier to enter into a union shop contract, the violation of which not only would require the termination of the employment and seniority of an employee in the class and craft represented by the contracting union but would also require the termination of the employment and seniority rights held by such employee in another class and craft exclusively represented by another railway labor organization?

STATEMENT OF THE CASE

Petitioner's statement of the case contains matters drawn from allegations in the pleadings of the parties but which were not established by evidence. The facts for the most part were stipulated by the parties (R. 71a-88a; S. R. 1b-2b) or were established by oral testimony (R. 89a-104a).[2] The District Court based its findings on the stipulation and oral testimony. The Court of Appeals adopted the findings of the District Court. We

[2] The Stipulation of the parties, while unsigned by the petitioner, was agreed to by it with the exception of paragraphs 4 and 5. See Exceptions to Stipulation of BRT (S. R. 1b). The facts stated in paragraphs 4 and 5 of the Stipulation were established by testimony (R. 89a-104a).

therefore deem it essential to set forth the material facts concurred in by the courts below.

The respondent Charles V. Smith was employed by The Baltimore & Ohio Railroad (herein referred to as "B & O") as a brakeman in 1929 (R. 72a; App. 2a). He was promoted to the craft of conductor on August 6, 1944, and after such date held and acquired seniority as a conductor under the collective bargaining agreement negotiated by the respondent Order of Railway Conductors & Brakemen (herein referred to as "ORC") as the exclusive bargaining representative of the class and craft of conductors on the B & O (R. 72a, 73a; App. 2a). Smith was employed in service as a regularly assigned conductor at the time of his proposed discharge in 1956 from all employment on the B & O for an alleged failure to comply with the terms of the union shop contract of the petitioner (herein referred to as "BRT") while he was working as a brakeman in 1952 (R. 72a-74a; App. 2a-4a). The ORC contract does not contain a union shop agreement. (App. 9a).

The union shop agreement between the B & O and the BRT, as the exclusive bargaining representative for the class and craft of trainmen,[3] was construed and acted upon by the parties thereto as requiring the discharge of any employee determined to be in violation thereof not only as a trainman but also as requiring that such employee be deprived of his employment and seniority rights *as a conductor* (R. 75a; App. 4a-5a). The BRT demanded that the B & O terminate the employment and seniority rights of the respondent Smith and others similarly situated *as conductors and as members of the*

[3] The term "trainmen" is a general classification that covers the following classes: yard helpers, yard foremen, passenger and freight brakemen and flagmen, and switch tenders (R. 74a, Par. 8(a)).

craft and class of conductors, and the B & O acquiesced in such demand (R. 75a; App. 4a, 5a).

Seeking to protect his employment and seniority rights *as a conductor only*, the respondent Smith, on behalf of himself and others similarly situated, brought this action for injunctive relief against the B & O (R. 7a-24a). The BRT, petitioner herein, intervened as a party defendant (R. 1a, 6a).

The District Court held that the BRT union shop contract did not require interpretation inasmuch as there was no dispute between the parties thereto as to its interpretation or application (App. 6a). It further held that as so applied by the parties the contract was invalid and in violation of the Railway Labor Act insofar as it was applied to deprive Smith and others similarly situated of their employment and seniority rights *as conductors*, and granted the injunction as prayed against both the petitioner and the respondent B & O (App. 7a). No appeal was taken by the B & O (App. 11a). The petitioner alone appealed to the Court of Appeals (R. 111a), which court affirmed the judgment below (App. 8a-17a). The issue in the case at bar did not involve the interpretation of the contract, but rather the question of whether the contract, as construed and acted upon by the parties thereto, violated the restrictions of the union shop provisions of the Railway Labor Act.

REASONS FOR DENYING THE WRIT

I

The Courts Have Jurisdiction of Suits That Involve the Validity of Contracts Under the Railway Labor Act.

Based upon the evidence in this cause, the greater portion of which was stipulated by the parties, the courts below properly held that the dispute involved the validi-

ty of the union shop agreement as construed and acted upon by the parties thereto and was a case of which the court had jurisdiction. *Brotherhood of Railroad Trainmen vs. Howard*, 343 U. S. 768; *Steele vs. Louisville & Nashville R. Co.*, 323 U. S. 192; *Tunstall vs. Brotherhood of Locomotive Firemen & Enginemen*, 323 U. S. 210; *Mount vs. Grand International Brotherhood of Locomotive Engineers*, 226 F. 2d 604 (C. A. 6) certiorari denied 350 U. S. 967; *Williams vs. Central of Georgia Ry. Co.*, 124 F. Supp. 164. (M. D. Ga.)

Brotherhood of Railroad Trainmen vs. Howard, 343 U. S. 768, involved a collective bargaining agreement which was "construed and acted upon" by the parties thereto as prohibiting Negro porters from performing any of the duties of brakemen (343 U. S. at 772). This court held that the agreement was "to this extent illegal and unenforceable", stating at 343 U. S. 768, 774:

> "This dispute involves the validity of the contract, not its meaning."

Moreover, the BRT union shop agreement (R. 15a-24a) required no interpretation. By its terms it is limited to the classes and crafts represented by the BRT (R. 22a). It does not purport to affect conductors. The B & O and the BRT cannot, by enforcing an unambiguous contract in an illegal manner and contrary to its plain language, create a question of meaning where none exists and thereby deprive the courts of jurisdiction to grant relief against action that is illegal under the Railway Labor Act. See *W. P. Brown & Sons Lumber Co. vs. Louisville & Nashville R. Co.*, 299 U. S. 393, at 397-8. If the BRT union shop agreement purported to apply to conductors, it would be clearly invalid in this respect under the Railway Labor Act, and particularly Section

2, Ninth, and Section 2, Eleventh, (a),[4] and the courts would have the duty to enjoin its invalid operation. *Brotherhood of Railroad Trainmen vs. Howard*, 343 U. S. 768. *Virginian Ry. Co. vs. System Federation No. 40*, 300 U. S. 515, 548, 549. The contracting parties cannot by indirection accomplish a result for which they could not have legally provided by the terms of the agreement.

The District Court clearly had jurisdiction of this suit. The numerous cases stemming from the decision in *Slocum vs. Delaware, Lackawanna & Western R. Co.*, 339 U. S. 239, cited by the petitioner (Petition, pp. 7-8) have no application to the facts in the instant case, as was pointed out in the decision of the Court of Appeals (App. 12a-13a).

The petitioner erroneously argues that the decision of the Court of Appeals in this action is in conflict with the holding of this court in *Pennsylvania R. Co. vs. Rychlik*, 352 U. S. 480. The *Rychlik* case involved employees who were members of a craft represented by a union having a union shop agreement. They joined another union, United Railroad Operating Crafts (UROC) which was competing for the craft with the contracting union, and were charged with violation of the union shop agreement. This court, interpreting Section 2, Eleventh, (c), of the Railway Labor Act,[5] held that the alternative union membership allowed by such subsection is only in those unions which had qualified under Section 3, First, of the Act.[6] *No issue of this kind is presented in this case.* The respondent ORC is a railway labor organization national in scope and qualified under Section 3,

[4] 45 U. S. C., Sec. 151, *et seq*; 45 U. S. C., Sec. 152, Ninth; 45 U. S. C., Sec. 152, Eleventh, (a).

[5] 45 U. S. C., Sec. 152, Eleventh, (c).

[6] 45 U. S. C., Sec. 153, First.

First, of the Railway Labor Act. The issue in this case, unlike that in the *Rychlik* case, does not involve the claim that an alternative union membership prevented the discharge of the individual respondents as trainmen. The fundamental issue is the validity of the BRT union shop agreement covering trainmen to effect the discharge of respondents *as conductors* and the destruction of the employment and seniority rights acquired by them *as members of the craft of conductors.*

The District Court and the Court of Appeals upheld the validity of the union shop contract insofar as it applied to the job status and seniority of the trainmen, but held it invalid insofar as it was enforced against conductors holding employment rights in the craft of conductors under the exclusive jurisdiction of the ORC. As the Court of Appeals stated in its decision:

> "* * * much of BRT's argument is eliminated by the fact that the relief is prayed for *only* as to the rights of Smith and others *as conductors* and the court specifically limited the relief granted to such rights." (App. 14a) (emphasis supplied)

II

There Is No Issue In This Cause As To Whether After-Acquired Membership In Another Organization National In Scope Will Excuse A Prior Failure To Comply With A Union Shop Agreement.

The issue of after-acquired membership in a qualified labor organization is not involved in the case at bar. It was never urged in the courts below, nor did such courts rely on or consider such an issue. No claim was made by the respondents that the subsequent membership, if any, of the individual respondents in the ORC prevented their discharge *as trainmen* for their alleged failure to comply with the petitioner's union shop agreement.

The sole claim was that the Railway Labor Act did not authorise the BRT and the railroad to enter into a union shop agreement covering trainmen which deprived conductors of their employment and seniority rights.

Section 2, Eleventh, (a), is the portion of the 1951 amendment to the Railway Labor Act which allowed the union shop in the railroad industry, subject to the restrictions therein contained. One of the basic tenets of the Railway Labor Act has been and is that the various crafts and classes shall be exclusively represented by labor organizations which represent a majority of the members of such craft or class. The ORC is the certified representative of road conductors employed by the B & O. As the Court of Appeals correctly stated:

> "In the light of the whole Act, we think the phrase 'continued employment' means continued employment in the craft or class covered by the BRT contract, that is, in the trainmen, and that the phrase has no reference to employment in a totally different craft or class such as that of the conductors * * *." (App. 16a)

The ORC is the exclusive bargaining representative for the class and craft of conductors and has the obligation and duty of representing all employees belonging to such class and craft, whether members of the organization or not. The BRT has no right to encroach, trespass and infringe upon the employment and seniority rights of respondents as conductors and as members of the class and craft of conductors. The courts below enjoined the attempt as illegal and invalid under the Railway Labor Act.

CONCLUSION

Upon the record in this cause we submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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